**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.825 OF 2006**
**WITH**
**CIVIL APPLICATION NO.769 OF 2003**

Shaikh Kasam Shaikh Bhikoo ..Appellants through Lrs

V/s.

Hazratshah Rahemanshah & anr. ..Respondents

Mr.Vilas B. Tapkir, advocate for the appellants
Mr.V.S.Gokhale, advocate for the respondent Nos.1, 2-a to 2-d

**CORAM : B.H.MARLAPALLE, J.**

**DATE : 3RD APRIL, 2007**

**P.C.**

1. The appellant had instituted Special Civil Suit No.2273 of 1996 for possession, cancellation of instrument and mandatory injunction in respect of a structure (a shed) comprising of three rooms standing on the Government land and for cancellation of instrument of sale conveyance entered into between plaintiff and defendant in the year 1965. The suit structure was standing on C.T.S.No.38A Old No.496 Juna Bazar Elphiston Road, Khadki, District Pune. It was contended that the

land on which the structure was standing belongs to Khadki Cantonment Board i.e.Government of India and it was leased to the plaintiff by an agreement of lease signed on 7th January, 1994. He claimed so far as the structure is concerned, it was gifted to him by the original owner i.e.Sitabai Shaikh Rustum on 17th May, 1961 by a registered Gift-Deed and accordingly, the plaintiff was put in possession of the suit shed. The lease was re-newed in respect of the land below the shed till 9th October, 1989. The plaintiff thereafter started collecting the rent from the tenants. He had obtained a loan of Rs.7000/- from the defendants on 22nd February, 1965 and for repayment of the said loan as a security defendants got executed some documents. It was agreed that the defendants would occupy the shed for 25 years but lease rights were never assigned to the defendants. The defendants couldnot abide by the terms & conditions of the alleged agreement so as to pay the remaining amount of Rs.2000/- within a period of six months and therefore, the plaintiff was constrained to file the suit.

2. The trial Court on the assessment of the evidence and pleadings of the parties held that the plaintiff could not prove the document dated 22nd February, 1965 was executed for the security of the amount advanced by the defendants and the terms & conditions quoted (in para 4 of the plaint) were also not proved. Consequently, as per the trial Court, the plaintiff was not entitled for any relief. The lower appellate Court while dismissing Civil Appeal No.1087 of 2000 held that the plaintiff could not establish that the registered Sale Deed dated 22nd February, 1965 was sham and bogus document and therefore, the plaintiff was not entitled to claim the possession of the suit premises from the defendants. The lower appellate Court further held that the suit claim was hit by limitations and on all these counts the order passed by the trial Court dismissing the suit did not call for interference.

3. The Sale Deed dated 22nd February, 1965 was brought on record at Exh.41 and on perusal of the same it clearly went to show that it was an out and

out sale transaction of the structure standing on the lease property. This document did not infer that it was executed by way of a security of loan as alleged by the plaintiff. Similarly, the document of Sale Deed was executed on 22nd February, 1965 and a declaration was sought against the same after a lapse of 31 years. The document was registered and therefore, as per Section 92 of the Indian Evidence Act, no oral evidence can be permitted to attack the terms therein. In addition, in Regular Civil Suit Nos.37 of 1966 and 98 of 1967, the plaintiff had accepted the defedants as the owner of the suit property and in the second suit he himself had claimed to be a tenant in one of the rooms which was part of the suit structure. It was also noted that the Cantonment Board had extended lease of the suit land in favour of the plaintiff upto the year 2019 and whether the property could be sold by the plaintiff is an issue which will have to be decided only if the lease is not re-newed beyond the year 2019.

4. These concurrent findings recorded by the Courts below are based on the contents of the registered Sale Deed dated 22nd February, 1965 at Exh.41 and therefore, no other substantial question of law arises for the cosideration of this Court. Consequently, this second appeal must fail at the threshold. The appeal is dismissed in limine Civil application does not survive. Ad-interim order, if any, stands vacated.

**(B.H.MARLAPALLE, J.)**